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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,703	12/04/2003	Susumu Minezaki	1688.1001D	6982

21171 7590 03/23/2005  
STAAS & HALSEY LLP  
SUITE 700  
1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER

KENNEDY, SHARON E

ART UNIT PAPER NUMBER

3762

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/726,703	<b>Applicant(s)</b> MINEZAKI ET AL.	
	<b>Examiner</b> Sharon Kennedy	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/04/2003</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Election/Restrictions***

This application contains several species of infusion devices. A restriction was applied in the parent application. It is expected that claims 1-4 will be canceled and that applicant is now pursuing the invention of figures 15-20. Applicant is reminded that a restriction may be applied at any time during the prosecution of an application, and that figures 15-20 have been already been elected by original presentation.

#### ***Double Patenting***

Claims 1-4 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4 of prior U.S. Patent No. 6,685,673. This is a double patenting rejection.

#### ***Claim Rejections - 35 USC § 102***

Claims 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Layer et al., US 5,529,463. Layer discloses the vacuum pump barrel (Layer syringe pump 16), the check valves 110, the piston (unlabeled, distal end of 56a), a stopper (Layer pump restraining means 27), and a pusher 70. The second structure is shown by Layer assembly 60, having the liquid syringe, liquid port and a piston 64 fitted therein. Regarding claim 7, note the additional syringe 18 which anticipates the second structure and dual pushers.

***Claim Rejections - 35 USC § 103***


Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Layer '463. Layer discloses all the claimed embodiments except for the front end of the vacuum pump barrel extending further forward than the front end of the liquid syringe. Layer shows the opposite. However, this rearranging is seen as an obvious design choice in view of the MPEP, which states, "It is well established that changes in sizes or proportions are *prima facie* obvious in the lack of a showing of criticality." See MPEP 2144.04, IV. A., entitled, "Changes in Size/Proportion." Applicant's specification does not assert any unusual feature resulting from having the front end of the barrel extend further than the liquid syringe, accordingly, the claims must be rejected.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571/272-4955.

Information regarding the status of an application may be obtained by going to [www.uspto.gov](http://www.uspto.gov), clicking on "Status &IFW", entering the application number, and then clicking on one of the tabs to retrieve the appropriate information.

  
Sharon Kennedy  
Primary Examiner  
Art Unit 3762